



Court File No. CV-24-00730212-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 20 th
)	
JUSTICE CAVANAGH)	DAY OF NOVEMBER 2025

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF **CHESSWOOD GROUP LIMITED, CASE FUNDING INC., CHESSWOOD
HOLDINGS LTD., CHESSWOOD US ACQUISITIONCO LTD., LEASE-WIN
LIMITED, WINDSET CAPITAL CORPORATION, CHESSWOOD CAPITAL
MANAGEMENT INC., CHESSWOOD CAPITAL MANAGEMENT USA INC.,
942328 ALBERTA INC., 908696 ALBERTA INC., 1000390232 ONTARIO INC.**
and **CGL HOLDCO, LLC**

ORDER
(LIFTING OF STAY OF PROCEEDINGS)

THIS MOTION, made by Royal Bank of Canada, in capacity as administrative and collateral agent (the "**Agent**") to the lenders under a second amended and restated credit agreement dated as of January 14, 2022, as amended (the "**Pre-Filing Lenders**") for an order, *inter alia*, lifting the stay of proceedings (the "**Stay**") established pursuant to the amended and restated initial order dated November 7, 2024 in the within proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day via Zoom videoconference in Toronto, Ontario.

ON READING the affidavit of Wenwei (Wendy) Chen sworn October 27, 2025 and the Exhibits thereto, the Motion Record of the Agent returnable November 4, 2025 and on hearing the submissions of counsel for the Agent, counsel to FTI Consulting Canada Inc., in its capacity as monitor (the "**Monitor**") of Chesswood Group Limited, Case Funding Inc., Chesswood Holdings Ltd., Chesswood US Acquisitionco Ltd., Lease-Win Limited, Windset Capital Corporation, Chesswood Capital Management Inc., Chesswood Capital Management USA Inc., 942328 Alberta Inc. (formerly Rifco National Auto Finance Corporation), 908696 Alberta Inc.

(formerly Rifco Inc.), 1000390232 Ontario Inc. and CGL Holdco, LLC (collectively, the “CCAA Parties” and each a “CCAA Party”), and such other counsel present;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

LIFTING OF STAY OF PROCEEDINGS

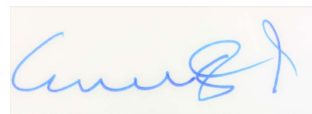
2. **THIS COURT ORDERS** that the Stay be and is hereby lifted solely for the purpose of permitting the Agent, for and on behalf of the Pre-Filing Lenders, to commence and pursue a proceeding at the Ontario Superior Court of Justice against Chesswood Group Limited and certain former directors and officers or senior management figures of the CCAA Parties, substantially in the form of the proposed Statement of Claim attached hereto as **Schedule “A”** (the “**Claim**”).

3. **THIS COURT ORDERS AND DIRECTS** the Registrar of the Ontario Superior Court of Justice to issue the Claim, subject to payment of the appropriate filing fee.

GENERAL

4. **THIS COURT ORDERS** that there shall be no costs of this motion.

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. prevailing Eastern Time on the date of this Order without the need for entry and filing.



SCHEDULE “A”

Proposed Statement of Claim

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

(Court Seal)

ROYAL BANK OF CANADA, in its capacity as Administrative Agent and
Collateral Agent to the Lenders

Plaintiff

- and -

CHESSWOOD GROUP LIMITED, RYAN MARR, TOBIAS RAJCHEL,
CHRISTOPHER WALLBANK and DANIEL WITTLIN

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL

FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: **Chesswood Group Limited**
1133 Yonge Street, Suite 603
Toronto, ON
M4T 2Y7

AND TO: **Ryan Marr**
15 Marlee Avenue
Toronto, ON
M6E 3B1

AND TO: **Tobias Rajchel**
78 Rumsey Road
Maple, ON
L6A 4L8

AND TO: **Christopher Wallbank**
58 Leuty Avenue
Toronto, ON
M4E 2R4

AND TO: **Daniel Wittlin**
96 Dunloe Road
Toronto, ON
M5P 2T8

CLAIM

1. The plaintiff claims, on behalf of the Lenders (as defined herein):
 - (a) As against the defendant Chesswood Group Limited ("**Chesswood**"), damages in the amount of at least C\$83,000,000 million, or such further amount to be determined, for breach of the Credit Agreement (as defined herein);
 - (b) As against the defendants Ryan Marr, Tobias Rajchel, Christopher Wallbank and Daniel Wittlin (the "**Individual Defendants**"), damages in the amount of at least C\$83,000,000 million, or such further amount to be determined, for
 - (i) negligent supervision and oversight of the calculation of the Borrowing Base (as defined herein), including failure to institute appropriate control mechanisms and processes, and/or failure to adhere to such mechanisms and processes, sufficient to ensure the accuracy of Borrowing Base calculations and the accuracy of the representations made in the Borrowing Base Certificates (as defined herein); and
 - (ii) negligent misrepresentation in respect of the Borrowing Base and Borrowing Base Certificates, including *inter alia* in regard to the representation of the correct and accurate calculation of the Borrowing Base, the figures represented, and the representations of

certification having been completed by the Chief Financial Officer (“**CFO**”) or other requisite officer of Chesswood;

- (c) A declaration that the Individual Defendants breached section 248(2) of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B. 16 (“**OBCA**”), by exercising their powers as Directors and Officers of Chesswood in a manner that was oppressive or unfairly prejudicial or that unfairly disregarded the interests of the plaintiff;
- (d) If necessary, a declaration that the plaintiff is a proper person to commence an action pursuant to section 248(1) of the *OBCA*;
- (e) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”);
- (f) postjudgment interest in accordance with section 129 of the *CJA*;
- (g) the costs of this proceeding, plus all applicable taxes; and
- (h) such further and other relief as to this Honourable Court may seem just.

FACTUAL BACKGROUND

The Parties

2. The plaintiff, Royal Bank of Canada (“**RBC**”), is a Canadian financial institution and Schedule I bank under the *Bank Act*, S.C. 1991, c. 46. As described further below, the plaintiff was the “**Administrative Agent**” and “**Collateral Agent**” to a syndicated group of financial institutions consisting of RBC, The Toronto-Dominion Bank, The Huntington

National Bank, M&T Bank, Canadian Imperial Bank of Commerce, and Laurentian Bank of Canada (collectively, the “**Lenders**”).

3. During the material time, the Lenders were party to a revolving secured credit facility with Chesswood, as borrower, pursuant to the Credit Agreement (as defined herein).

4. Chesswood is a holding company based in Toronto, Ontario and incorporated pursuant to the *OBCA*. During the material time, Chesswood’s subsidiaries operated in speciality finance across various industries and sectors. The business of these subsidiaries consisted in originating loans and leases, collecting interest and principal thereon, and in certain cases selling or securitizing the loans and leases for payment. During the material time, these subsidiaries included, but were not limited to:

- (a) Pawnee Leasing Corporation (“**Pawnee**”), incorporated pursuant to the laws of Colorado, United States and providing equipment financing across a range of credit profiles, principally in the United States;
- (b) Rifco National Auto Finance Corporation (“**Rifco**”), incorporated pursuant to the laws of Alberta, Canada and providing vehicle financing for new and used automobiles in Canada;
- (c) Vault Credit Corporation (“**Vault Credit**”), incorporated pursuant to the *OBCA* and providing equipment financing principally to small and medium-sized businesses in Canada;

- (d) Vault Home Credit Corporation (“**Vault Home**”), incorporated pursuant to the *OBCA* and providing home improvement and other consumer financing solutions to borrowers in Canada; and
- (e) Waypoint Investment Partners Inc. (“**Waypoint**”), incorporated pursuant to the *OBCA*. Waypoint is an investment firm offering exposure to, among other things, the equipment financing sector and equipment and consumer financing credit.

5. On October 29, 2024, pursuant to an order of the Ontario Superior Court of Justice (Commercial List), Chesswood and certain of its subsidiaries (collectively, the “**Chesswood Group**”) were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) under Court File No. CV-24-00730212-00CL (such proceedings, the “**CCAA Proceedings**”). Shortly before and during the CCAA Proceedings, these subsidiaries (or their assets) were sold to realize proceeds for the benefit of Chesswood’s creditors, including the Lenders.

6. Ryan Marr is a former Director, Chief Executive Officer (“**CEO**”) and President of Chesswood. Ryan Marr joined Chesswood on or around June 29, 2020, and held the aforementioned positions until his resignation on or around July 8, 2024.

7. Tobias Rajchel is a former CFO, and former CEO and President, of Chesswood. Tobias Rajchel joined Chesswood on or around November 2020 as Vice President, Finance and became CFO on or around March 2021. Tobias Rajchel acted as CFO of Chesswood from March 2021 until his appointment as CEO and President of Chesswood

on or around July 2024. Tobias Rajchel resigned as CEO and President on or around September 2025.

8. Christopher Wallbank is the former Executive Vice President of Funding and Risk Management for Chesswood. Christopher Wallbank joined Chesswood on or around September 2021, and held this position until his termination on or around June 2024.

9. Daniel Wittlin is a former Director of Chesswood. Daniel Wittlin became a Director of Chesswood on June 15, 2021, and resigned his position on or around July 30, 2024, shortly before Ryan Marr's resignation. Daniel Wittlin was, and remains, a Director of Vault Credit and Vault Home, which were subsidiaries of Chesswood during the material time (as stated above) and were purchased by entities controlled by Daniel Wittlin on August 9, 2024.

The Credit Agreement – Overview

10. On January 14, 2022, the plaintiff, as Administrative Agent and Collateral Agent, and the Lenders, as lenders, entered into a second amended and restated credit agreement with Chesswood, as borrower, as later amended or amended and restated from time to time (the "**Credit Agreement**").

11. The Credit Agreement established a revolving secured credit facility with an initial maximum principal amount of U.S.\$300,000,000. This amount could be, and was, adjusted in subsequent amendments to the Credit Agreement.

12. To secure its obligations under the Credit Agreement, Chesswood granted the plaintiff a security interest over all of its present and after acquired undertakings and

property (the “**Collateral**”), pursuant to a security agreement dated as of December 8, 2014.

13. In addition, substantially all of Chesswood’s subsidiaries provided guarantees of Chesswood’s obligations under the Credit Agreement. The obligations under those guarantees were also secured by security agreements executed and delivered by each of the subsidiaries who provided guarantees over all of such subsidiaries’ present and after acquired undertakings and property (the “**Subsidiary Collateral**”).

14. Chesswood used the credit facility provided under the Credit Agreement to fund the operations of its subsidiaries.

15. The Credit Agreement designated the plaintiff as Administrative Agent and Collateral Agent to the Lenders.

16. In its role as Administrative Agent, the plaintiff was responsible for administration of the credit facility, including: (a) receiving requests from Chesswood for borrowings under the Credit Agreement and advancing said borrowings to Chesswood on behalf of the Lenders; (b) receiving Borrowing Base Certificates and Compliance Certificates (as defined herein) from Chesswood; and (c) in the event of a default, declaring Chesswood in default on behalf of the Lenders and commencing proceedings in respect of that default pursuant to instructions from the Lenders in accordance with the Credit Agreement.

17. In its role as Collateral Agent, the plaintiff held the Collateral and the Subsidiary Collateral on behalf of, amongst others, the plaintiff, as Administrative Agent and Collateral Agent, and the Lenders (the “**Secured Creditors**”). From time to time, the

plaintiff would release the Secured Creditors' security interest in the Collateral and/or the Subsidiary Collateral in connection with or following certain transactions, in accordance with the Credit Agreement.

The Credit Agreement

The Borrowing Base and the Lending Limit

18. Under the Credit Agreement, Chesswood did not have *carte blanche* to borrow the maximum principal amount stipulated in the Credit Agreement. On the contrary, pursuant to section 2.2(1) of the Credit Agreement, Chesswood's available borrowings could not exceed the "**Lending Limit**", as defined in the Credit Agreement.

19. The Lending Limit was determined by reference to, among other things, a further defined concept called the "**Borrowing Base**." The Borrowing Base represented the value of a predefined set of assets held by certain subsidiaries in the Chesswood Group at a given time. Only assets meeting predefined eligibility criteria qualified for inclusion in the Borrowing Base. For example, loans and leases subject to dispute, counterclaim or set off, or loans and leases which were 61 days or more past due, were ineligible. The eligibility criteria served to ensure that only assets with sufficient creditworthiness formed part of the Borrowing Base.

20. In addition, once sold or securitized by the Chesswood Group, assets no longer formed part of the Borrowing Base. The Borrowing Base consisted only of assets held by, and proprietary to, the Chesswood Group.

21. Further, only a specified percentage of these eligible assets were to be included in the Borrowing Base, which number generally ranged from 65%-85%, depending on the class of asset. This margin discount served to ensure that Chesswood would never have borrowings in excess of approximately 65%-85% of its creditworthy assets. Accordingly, the margin discount provided comfort to the Lenders that they would have sufficient security against the Chesswood Group's assets in the event that Chesswood ever defaulted under the Credit Agreement. Simply put, the Borrowing Base determined the aggregate amount of borrowings that Chesswood could borrow under the Credit Agreement as at the time the Borrowing Base was calculated.

22. As the amount of available borrowings was based on the Borrowing Base, the calculation of the Borrowing Base was integral to the agreement by the Lenders to extend loans to Chesswood, and by extension to the Chesswood Group. Pursuant to section 2.6(6) of the Credit Agreement, in the event that Chesswood's outstanding borrowings exceeded the Lending Limit, Chesswood would be required to pay down such excess to stay below the Lending Limit (the "**Borrowing Base Covenant**"), failing which Chesswood would be in default under section 10.1 of the Credit Agreement (a breach of the Borrowing Base Covenant, along with any other specified default in the Credit Agreement, is hereinafter called an "**Event of Default**").

The Borrowing Base Certificates and the Compliance Certificates

23. The volume and movement of the Chesswood Group's assets meant that independently inspecting or confirming the value and/or quantity of those assets on an ongoing basis was both impractical and cost prohibitive. At all material times, the

Chesswood Group's asset base was constituted by innumerable loans, leases and debt obligations originated and held by the various subsidiaries comprising the Chesswood Group. In addition to the ordinary-course maturation and turnover in the loans, leases and debt obligations, Chesswood's subsidiaries routinely securitized or sold various of its assets to special purpose vehicles, or to securitization funders, some of which assets Chesswood continued to service for such special vehicle entities or securitization funders after they were securitized or sold.

24. As such, the plaintiff did not, nor reasonably could have, independently calculated or confirmed the Borrowing Base at any given time.

25. Instead, the Credit Agreement expressly placed the obligation for calculation and reporting of the Borrowing Base on Chesswood, by way of two forms of reporting certificate prescribed by the Credit Agreement.

26. First, the Credit Agreement required Chesswood, on a monthly basis, to prepare and deliver to the plaintiff a certificate setting out the Borrowing Base in respect of the previous month (the "**Borrowing Base Certificate**"). Borrowing Base Certificates were required to be provided in the form provided in the Credit Agreement, and were required to contain representations confirming, among other things, (i) the Borrowing Base and the value of the classes of eligible assets that constituted the Borrowing Base, (ii) the amount of outstanding borrowings to date, and (iii) the Lending Limit (which, as noted, was derived from the Borrowing Base).

27. The Credit Agreement expressly required that each Borrowing Base Certificate be specifically signed off on by Chesswood's CFO, or another officer "acceptable to the Administrative Agent."

28. Second, in addition to the Borrowing Base Certificate, the Credit Agreement also required Chesswood to provide a certificate on a quarterly basis certifying compliance with the Credit Agreement and affirming that Chesswood was not at that time in default of its obligations under the Credit Agreement (the "**Compliance Certificate**"). The Compliance Certificate also certified various financial amounts required to be provided under the Credit Agreement.

29. The Credit Agreement expressly required that each Compliance Certificate be specifically signed off on by Chesswood's CFO, or another officer "acceptable to the Administrative Agent."

Borrowing Base Reporting and the Discovery of the Borrowing Base Errors

30. During the material time, Chesswood delivered monthly Borrowing Base Certificates, and quarterly Compliance Certificates, as required by the Credit Agreement. In each case, the certificates were shown as executed by either Tobias Rajchel as Chesswood's CFO, or Ryan Marr as Chesswood's CEO. Prior to the events of May 2024, discussed below, the Borrowing Base Certificates at all times showed Chesswood as being within the Lending Limit, based on the Borrowing Base figures presented therein.

31. At all times, the plaintiff and the Lenders relied upon the accuracy of the representations contained in the Borrowing Base Certificates and Compliance Certificates in advancing funds pursuant to the Credit Agreement.

32. Section 8.1(m) of the Credit Agreement granted the Lenders certain rights to inspect Chesswood's financial records. Pursuant to such rights, the plaintiff retained a financial consulting and advisory firm to conduct annual reviews of, among other things, the Borrowing Base.

33. In the course of an annual inspection occurring in May 2024, it was discovered that Chesswood's Borrowing Base Certificate, dated April 15, 2024, appeared to have overstated the Borrowing Base by approximately U.S.\$62,000,000, and that Chesswood had exceeded the Lending Limit by approximately U.S.\$61,000,000. As noted below, the amount of the Borrowing Base overstatement was subsequently estimated to be approximately U.S.\$92,000,000. The amount by which Chesswood's outstanding borrowings exceeded the Lending Limit is hereinafter called the "**Borrowing Base Deficiency**".

34. During or shortly after the review of Chesswood's Borrowing Base in May 2024, Ryan Marr contacted a representative of the plaintiff, and for the first time disclosed the Borrowing Base Deficiency to the plaintiff.

35. On June 14, 2024, the Lenders entered into a Waiver Agreement with the Chesswood Group (as subsequently amended, or amended and restated from time to time, the "**Waiver**"). At the time the Waiver was executed, the Borrowing Base Deficiency was estimated to be approximately U.S.\$92,000,000.

36. Pursuant to the Waiver, the Lenders agreed to waive the Events of Default for a limited period of time ("**Waiver Period**"), to permit Chesswood to liquidate certain of its assets to pay down the indebtedness under the Credit Agreement. The Waiver also reduced the amount of aggregate credit available under the Credit Agreement and required Chesswood to deliver Borrowing Base Certificates on a weekly basis (as opposed to the monthly basis previously required under the Credit Agreement). On June 14, 2024, Chesswood issued a news release stating that it was not in compliance with the Borrowing Base Covenant and had entered into the Waiver with the Lenders.

37. On July 22, 2024, Chesswood issued a further news release announcing that it would have to prepare and file restated financial statements and Management's Discussion and Analysis for the three months ended March 31, 2024, due to the Borrowing Base Deficiency.

38. On August 15, 2024, the Ontario Securities Commission issued a Failure to File Cease Trade Order as a result of Chesswood's failure to file interim financial statements and other documentation required under provincial securities laws.

39. During the Waiver Period, Chesswood sold the Vault Home and Vault Credit businesses for C\$60,000,000 to entities controlled by the defendant Daniel Wittlin, who had resigned as Director of Chesswood prior to the close of the transaction.

40. However, Chesswood's liquidation efforts were unsuccessful in selling any other of the Chesswood Group's businesses and significant indebtedness remained outstanding to the Lenders under the Credit Agreement. On October 16, 2024, the Waiver expired, reinstating the Events of Default which had been temporarily waived.

41. As at October 24, 2024, Chesswood owed the Lenders U.S.\$66,254,723.30 and C\$92,797,926.72, plus costs and expenses incurred by the plaintiff and the Lenders, and interest and other amounts associated with letters of credit issued under the Credit Agreement.

42. On October 29, 2024, the plaintiff, for and on behalf of the Lenders, obtained an order from the Ontario Superior Court of Justice (Commercial List) granting the Chesswood Group protection under the CCAA and appointing FTI Consulting Canada Inc. as the Monitor (the “**Initial Order**”).

43. At the time of the Initial Order, Chesswood had committed numerous Events of Default in breach of its obligations under the Credit Agreement. The Events of Default (which included the breach of the Borrowing Base Covenant) mainly related to the misrepresentation of the Borrowing Base and the corresponding excess borrowings by Chesswood beyond the Lending Limit.

44. The Chesswood Group remains under CCAA protection. Notwithstanding the realization efforts undertaken during the CCAA Proceedings, at least C\$83,000,000 remains owing to the Lenders.

Errors in the Borrowing Base Calculations

45. To the best understanding of the Lenders, it appears that several errors in the calculation of the Borrowing Base contributed to the Borrowing Base Deficiency (the “**Calculation Errors**”). The Lenders’ understanding is set out below. Full particulars of the procedural and substantive errors in the calculation of the Borrowing Base will be

within the knowledge of the Individual Defendants, each of whose involvement and responsibility is also set out below.

46. The Calculation Errors began in at least December 2022 and continued until the plaintiff's discovery of the Borrowing Base Deficiency in May 2024.

47. The plaintiff understands that there were numerous Calculation Errors that occurred between December 2022 and May 2024 which had the effect of misrepresenting and overstating Chesswood's Borrowing Base. Generally, the Calculation Errors were of two kinds: (i) including in the Borrowing Base assets that did not satisfy eligibility criteria as set out in the Credit Agreement; or (ii) including in the Borrowing Base assets which were not proprietary to the relevant Chesswood subsidiary, because they had been sold or securitized by that subsidiary. In all cases, the errors led to material misrepresentations in the Borrowing Base Certificates and Compliance Certificates

48. During the material time, Chesswood's Borrowing Base was primarily constituted by specified assets of the Chesswood subsidiaries Pawnee, Rifco, Vault Credit and Vault Home. These assets were principally accounts and debt obligations owing pursuant to a financing instrument, such as a loan or lease.

49. The Calculation Errors can be categorized according to the subsidiary to which they relate. At present, the plaintiff understands that *at least* the following Calculation Errors occurred between December 2022 and May 2024.

(i) Errors Respecting Pawnee's Assets

50. During the material time, the asset information submitted by Pawnee to Chesswood for calculation of the Borrowing Base included assets which had been securitized and belonged to various securitization facilities associated with Pawnee. These assets were identifiable as securitized, and therefore not proprietary to Pawnee.

51. Various securitized assets were included in Chesswood's Borrowing Base calculations in respect of Pawnee, notwithstanding that these assets were identified by Pawnee as securitized (and therefore not proprietary to Pawnee) and had not been included in the Borrowing Base calculations prior to 2023.

52. This error by itself grossly misrepresented the value of Chesswood's Borrowing Base. The inclusion of the securitized Pawnee assets artificially increased Chesswood's Borrowing Base, (i) for the Borrowing Base as at December 31, 2023, by U.S.\$27,272,710, and (ii) for the Borrowing Base as at March 31, 2024, by U.S.\$57,980,524.

(ii) Errors Respecting Rifco's Assets

53. During the material time, various loans originated by Rifco, called "**Repair Loans**", were included in the calculation of the Borrowing Base. Repair Loans were ineligible pursuant to the asset eligibility criteria set out in the Credit Agreement. Repair Loans were identifiable as such in the asset information logs provided by Rifco to Chesswood and were not included in Chesswood's Borrowing Base calculations until on or around March 2023.

54. Nevertheless, Chesswood's Borrowing Base calculations from on or around March 2023 until the discovery of the Borrowing Base Deficiency in or around May 2024 included Repair Loans. The inclusion of Repair Loans resulted in an artificial increase of Chesswood's Borrowing Base, (i) for the Borrowing Base as at December 31, 2023, by U.S.\$6,730,919, and (ii) for the Borrowing Base as at March 31, 2024, by U.S.\$5,822,871.

(iii) Errors Respecting Vault Credit and Vault Home's Assets

55. Vault Credit and Vault Home's asset information tapes submitted to Chesswood contained loans which were labelled "House", indicating that they were held by Vault Credit and Vault Home and had not been sold or securitized to an affiliate or third party.

56. During the material time, certain of Chesswood's Borrowing Base calculations included assets which were not labelled "House", and which therefore were not proprietary to Vault Credit or Vault Home. The inclusion of these assets resulted in an artificial increase of Chesswood's Borrowing Base, (i) for the Borrowing Base as at December 31, 2023, by U.S.\$18,327,908 in respect of Vault Home, and (ii) for the Borrowing Base as at March 31, 2024, by U.S.\$959,400 in respect of Vault Credit.

Preparation of the Borrowing Base Certificates and Compliance Certificates

57. At all material times, the Borrowing Base Certificate was prepared at the parent level, by Chesswood employees who worked as portfolio analysts, based on asset data submitted by the relevant subsidiaries.

58. These subsidiaries submitted asset data in the form of large electronic files called “**Data Tapes**”, which set out the loan and lease portfolios of the subsidiary and associated information, such as accounts receivables aging and cash flow details.

59. As alluded to above, the Data Tapes included assets that did not qualify for inclusion in the Borrowing Base, either because they were ineligible, or because they had been sold or securitized by the applicable subsidiary and therefore did not form part of that subsidiary’s asset pool.

60. Upon receipt of the Data Tapes, the Chesswood portfolio analyst would manually copy asset data into a calculation workbook coded with formulas. This calculation workbook yielded Borrowing Base calculations in respect of each applicable subsidiary. The portfolio analyst then combined the Borrowing Base calculations for each subsidiary into a consolidated Microsoft Excel sheet (the “**Consolidation Worksheet**”), setting out the total Borrowing Base in respect of all subsidiaries for reporting to the plaintiff.

61. The defendant Christopher Wallbank exercised immediate supervision over the portfolio analysts’ preparation of the Borrowing Base calculations.

62. The defendants Ryan Marr and Tobias Rajchel exercised supervision over Christopher Wallbank, and were ultimately responsible for both supervision of the Borrowing Base preparation and for ensuring the accuracy of Chesswood’s certified representations regarding the Borrowing Base and Lending Limit.

63. Upon completion of the Consolidation Worksheet and preparation of the Borrowing Base Certificate, the Chesswood portfolio analyst emailed the draft Borrowing Base

Certificate to Ryan Marr and Tobias Rajchel for approval, copying Christopher Wallbank and certain other Chesswood financial personnel on the email. This process was consistent with Chesswood's Internal Control Program (the "**Control Program**"), dated September 2023, which set out the following protocol for the preparation and review of the Borrowing Base:

- (a) After computing the Borrowing Base, the portfolio analyst would send the Borrowing Base calculations to the President and CEO (Ryan Marr) and CFO (Tobias Rajchel) for review;
- (b) The Borrowing Base calculations would also be sent to the "EVP Credit" (identified in the Control Program as Christopher Wallbank), and the CFOs of Chesswood's subsidiaries for their reference; and
- (c) The President and CEO (Ryan Marr), or the CFO (Tobias Rajchel) as "back up", would issue approval of the Borrowing Base, prior to submission to the plaintiff on behalf of the Lenders.

64. At all material times, Ryan Marr or Tobias Rajchel provided written approval of the Borrowing Base calculations via email.

65. Notwithstanding their conduct in providing written approvals, their obligations pursuant to the Control Program, and their express commitments to the Lenders, neither Ryan Marr nor Tobias Rajchel actually reviewed the portfolio analyst's Borrowing Base calculations. In the alternative, Ryan Marr and Tobias Rajchel failed to adequately or appropriately review the calculations.

66. For his part, Christopher Wallbank failed to adequately or appropriately review the Borrowing Base calculations, despite acting as immediate responsible supervisor to the Chesswood portfolio analyst and being internally regarded as having responsibility for Borrowing Base oversight.

67. The breaches of Ryan Marr, Tobias Rajchel and Christopher Wallbank extended beyond the calculation of the Borrowing Base, and included further contraventions relating to the Borrowing Base Certificates and Compliance Certificates themselves. As expressly mandated by the Credit Agreement, at all material times, the Borrowing Base Certificates contained the signature of Tobias Rajchel. The Lenders reasonably and naturally understood Tobias Rajchel's signature to be authentic, and to reflect his review and certification of the Borrowing Base Certificates. However, on some or all occasions Tobias Rajchel did not actually sign the Borrowing Base Certificates. Instead, his electronic signature was applied to the Borrowing Base Certificate during the preparation and review process of the Borrowing Base. Tobias Rajchel was aware at all times that his signature was being applied by others onto the Borrowing Base Certificate, even though he had not reviewed (or, in the alternative, had not adequately reviewed) the Borrowing Base Certificates.

68. The plaintiff pleads that the placement of Ryan Marr or Tobias Rajchel's signature on the Compliance Certificates was also undertaken on at least some occasions in an improper manner that did not constitute the actual execution or certification of the Compliance Certificate by the purported signing Officer. Full particulars of the Individual Defendants' misconduct relating to the Borrowing Base and Compliance Certificates are

within the knowledge of Ryan Marr, Tobias Rajchel, Christopher Wallbank and Daniel Wittlin.

Changes in Borrowing Base Review Protocol

69. Following the discovery of the Borrowing Base Deficiency in May 2024, Chesswood introduced a new policy for the calculation and review of the Borrowing Base (the “**New Policy**”).

70. The New Policy contained several quality control mechanisms to ensure the correctness and accuracy of the Borrowing Base calculations, including:

- (a) The CFO of Chesswood would prepare the Borrowing Base.
- (b) Concurrently and independently, the CFO of the applicable subsidiary would prepare the Borrowing Base in respect of that subsidiary and submit it to the Chesswood CFO for review. The CFO of the applicable subsidiary would sign a checklist confirming the correctness of asset data used in preparing the subsidiary’s Borrowing Base, including the total number of loans and leases, their classification (e.g. eligible versus non-eligible), and stating that any assets sold or securitized were clearly identified as such.
- (c) After the Chesswood Borrowing Base and subsidiary Borrowing Base were independently prepared by the Chesswood CFO and the applicable subsidiary’s CFO, respectively, both CFOs would sign a checklist confirming their independent Borrowing Base calculations, and that assets sold or securitized were clearly identified as such.

71. These quality control mechanisms were only enacted after the discovery of the Borrowing Base Deficiency and the resulting breach of the Borrowing Base Covenant. The Individual Defendants failed to enact quality control mechanisms to ensure the accuracy of Borrowing Base calculations between December 2022, approximately when the Calculation Errors began, and May 2024, when certain of the Calculation Errors were discovered.

72. The Individual Defendants' responsibilities included ensuring that Chesswood maintained appropriately rigorous controls and procedures. The requirements of the New Policy should have been in place throughout the material time and not only implemented after the Borrowing Base Deficiency had been discovered. In addition to their failures to adhere to even the relatively lax requirements of the Control Policy, as detailed above, the Individual Defendants are responsible for their failure to implement the appropriate New Policy in a timely fashion.

CHESSWOOD'S LIABILITY

Breach of Contract

73. Chesswood is liable to the plaintiff for breach of the Credit Agreement. Chesswood committed Events of Default under the Credit Agreement, as detailed at paragraph 43, which includes breach of the Borrowing Base Covenant. These Events of Default caused the Lenders' losses. In particular, the misstatement of the Borrowing Base and breach of the Borrowing Base Covenant caused the Lenders to advance funds which would not have otherwise been advanced, had Chesswood's Borrowing Base been accurately

represented to the Lenders in the Borrowing Base Certificates and Compliance Certificates.

74. Chesswood is liable for the total amount of indebtedness owing under the Credit Agreement.

THE INDIVIDUAL DEFENDANTS' LIABILITY

Negligent Supervision and Oversight of Borrowing Base

75. The Individual Defendants (Ryan Marr, Tobias Rajchel, Christopher Wallbank and Daniel Wittlin) are liable to the plaintiff for negligent supervision and oversight of the calculation of the Borrowing Base.

76. The Individual Defendants at all times owed the plaintiff a duty of care with respect to the accuracy of Borrowing Base representations. This duty extended to adequately supervising the calculation of the Borrowing Base and the preparation of Borrowing Base Certificates.

77. The Individual Defendants, as members of Chesswood's senior management, and in Daniel Wittlin's case due to his close relationship with Ryan Marr (discussed below), knew or ought to have known that failure to supervise the preparation of the Borrowing Base and adopt quality control mechanisms to verify the accuracy of Borrowing Base calculations could cause losses to the Lenders. The Individual Defendants stood in a proximate relationship with the plaintiff by virtue of, (i) holding positions in Chesswood vested with oversight responsibilities regarding the Borrowing Base calculations, (ii) corresponding with the plaintiff in respect of the Borrowing Base and other matters

pertaining to the Credit Agreement, and (iii) in the case of Ryan Marr and Tobias Rajchel, being specially authorized to sign the Borrowing Base Certificate pursuant to the Credit Agreement, as set out in paragraph 27, above.

78. The defendant Ryan Marr breached the standard of care by:

- (a) failing to review the Borrowing Base calculations and Borrowing Base Certificates; or, in the alternative, negligently reviewing the Borrowing Base calculations and Borrowing Base Certificates and failing to detect the Calculation Errors represented therein;
- (b) approving Borrowing Base Certificates that grossly overstated the Borrowing Base;
- (c) inserting or, in the alternative, allowing Tobias Rajchel's signature to be inserted on the Borrowing Base Certificate, notwithstanding Tobias Rajchel's failure to review or adequately review the Borrowing Base Certificate;
- (d) signing Compliance Certificates certifying compliance with the Credit Agreement, when Ryan Marr knew, or ought to have known, that he and the other defendants had not adequately confirmed the calculation of the Borrowing Base so as to ensure compliance with the Borrowing Base Covenant; and
- (e) failing to institute quality control protocols to ensure the integrity of Borrowing Base preparation and the accuracy of Borrowing Base

calculations, such as those ultimately adopted by Chesswood, as detailed in paragraph 70, above.

79. The defendant Tobias Rajchel breached the standard of care by:

- (a) failing to review the Borrowing Base calculations and Borrowing Base Certificates, despite being CFO and vested with responsibility to review the Borrowing Base pursuant to the Control Program; or, in the alternative, negligently reviewing the Borrowing Base calculations and Borrowing Base Certificates and failing to detect the Calculation Errors represented therein;
- (b) approving Borrowing Base Certificates that grossly overstated the Borrowing Base;
- (c) allowing his signature to be inserted on the Borrowing Base Certificates, notwithstanding his failure to review or adequately review the Borrowing Base Certificate; and
- (d) failing to institute quality control protocols to ensure the integrity of Borrowing Base preparation and the accuracy of Borrowing Base calculations, such as those ultimately adopted by Chesswood, as detailed in paragraph 70, above.

80. The defendant Christopher Wallbank breached the standard of care by:

- (a) as the immediate supervisor of the portfolio analyst and therefore responsible for Borrowing Base oversight, failing to supervise the portfolio

analyst and detect the Calculation Errors committed in the preparation of the Borrowing Base; and

- (b) failing to institute quality control protocols to ensure the integrity of Borrowing Base preparation and the accuracy of Borrowing Base calculations, such as those ultimately adopted by Chesswood, as detailed in paragraph 70, above.

81. In the case of Daniel Wittlin, while the plaintiff does not allege that the directors of Chesswood ought to have been aware of the misconduct detailed herein solely by virtue of their roles as directors, Daniel Wittlin was uniquely situated among the directors. Among the directors, Daniel Wittlin was the largest shareholder in Chesswood. Daniel Wittlin was also a Director and/or Officer of Vault Credit and Vault Home, two subsidiaries of Chesswood whose assets were included in the Borrowing Base. Finally, Daniel Wittlin was a close personal friend of Ryan Marr, joining Chesswood within approximately one year of Ryan Marr's appointment as CEO and exercising influence over the operations and business direction of the Chesswood Group during the material time.

82. By virtue of his heightened involvement in Chesswood (relative to other Chesswood directors), Daniel Wittlin owed the plaintiff the duty of care detailed in paragraphs 76-77, above, which duty was breached by:

- (a) failing to institute quality control protocols to ensure the integrity of Borrowing Base preparation and the accuracy of Borrowing Base calculations, such as those ultimately adopted by Chesswood, as detailed in paragraph 70, above, despite his close familiarity with these matters

arising from his relationship with Ryan Marr and other Chesswood directors and officers; and

- (b) acquiescing, and/or participating by commission or omission, in the misrepresentations made to the Lenders detailed above.

83. The above breaches of the standard of care were the proximate and in fact causes of the Lenders' loss. Had the Individual Defendants adequately reviewed the Borrowing Base calculations or instituted quality control mechanisms to ensure the correctness of those calculations, the Calculation Errors would not have arisen or, in the alternative, the Calculation Errors would have been detected prior to May 2024, when the plaintiff discovered the Borrowing Base Deficiency. In either event, had Chesswood's Borrowing Base been accurately represented, the Lenders would not have loaned funds in excess of the Borrowing Base (as occurred during the material time) and would accordingly not have suffered the losses which ultimately resulted.

Negligent Misrepresentation

84. The Individual Defendants are liable to the plaintiff for negligent misrepresentation in respect of the Borrowing Base.

85. The Individual Defendants owed the plaintiff a duty of care with respect to Borrowing Base representations, for the reasons set out at paragraphs 76-77, above.

86. The Individual Defendants negligently made or contributed to the making of erroneous representations in respect of Chesswood's Borrowing Base, which representations were contained on the Borrowing Base Certificates.

87. In addition, by inserting or allowing to be inserted on the Borrowing Base Certificates the signature of Tobias Rajchel, the defendants Ryan Marr and Tobias Rajchel misrepresented that Tobias Rajchel had reviewed and certified the Borrowing Base Certificate.

88. The plaintiff relied on the truthfulness and accuracy of the Borrowing Base Certificate in deciding to advance funds under the Credit Agreement. The plaintiff also relied on the representation that Tobias Rajchel, as CFO, had reviewed and certified the Borrowing Base Certificate and thereby confirmed the accuracy of its contents.

89. The plaintiff detrimentally relied on these misrepresentations and suffered losses as a result. For the reasons set out at paragraph 83, the misrepresentation of Chesswood's Borrowing Base was the direct and proximate cause of the Lenders' losses.

Oppression

90. As a creditor of Chesswood, the plaintiff is entitled to a declaration that it is a "complainant" within the meaning of sections 245 and 248(1) of the *OBCA*.

91. The plaintiff had a reasonable expectation that the Individual Defendants, as directors and officers of Chesswood, would not act in a manner that was oppressive, unfairly prejudicial or that unfairly disregarded the interests of the plaintiff and the Lenders. In particular, the plaintiff had a reasonable expectation that Chesswood's Borrowing Base Certificates would truthfully represent Chesswood's Borrowing Base, and that the Individual Defendants would oversee the preparation of the Borrowing Base Certificate so as to ensure the accuracy of its contents.

92. This reasonable expectation was grounded in and supported by the provisions of the Credit Agreement, which required Chesswood during the material time to deliver Borrowing Base Certificates every month, and which tethered the availability of borrowings – and therefore the amount of the Lenders' exposure – to the Borrowing Base. In light of the structure of the Credit Agreement, under which the Lenders advanced funds directly and fully on the reliance of Borrowing Base Certificates, the plaintiff believed that the Borrowing Base Certificates would be meticulously and carefully prepared and would correctly and accurately represent the eligible asset base of the Chesswood Group.

93. This reasonable expectation was also grounded in the plaintiff's difficulty to verify the Borrowing Base Certificates on a routine basis, as pleaded at paragraphs 23-24, above. The plaintiff was entirely reliant on Chesswood and the Individual Defendants to correctly and accurately represent the Borrowing Base, as the plaintiff could not reasonably audit or otherwise confirm the veracity of the monthly Borrowing Base Certificates on a regular ongoing basis.

94. The Individual Defendants breached the plaintiff's reasonable expectation for correct and accurate Borrowing Base reporting by (a) negligently making or contributing to the making of erroneous representations respecting Chesswood's Borrowing Base; (b) failing to establish quality control protocols to ensure the integrity of Borrowing Base preparation and the accuracy of Borrowing Base Certificates, and (c) in the case of Ryan Marr, Tobias Rajchel and Christopher Wallbank, failing to adequately oversee and review the Borrowing Base calculations and Borrowing Base Certificates.

95. The Individual Defendants were directly implicated in this oppressive conduct; their actions were, at all material times, a proximate and direct cause of the Borrowing Base Deficiency and the Lenders' resulting losses.

96. Some or all of the Individual Defendants personally benefited from the aforementioned oppressive conduct. Some or all of the Individual Defendants were invested in Chesswood and/or held investments in Chesswood's subsidiary, Waypoint, and benefited from the injection of credit into Chesswood that would not have occurred but for the Borrowing Base misrepresentations.

Damages

97. Currently, Chesswood's indebtedness to the Lenders is in excess of C\$83,000,000. Although the CCAA Proceedings are still ongoing, substantially all of the Chesswood Group's assets have been realized upon, subject only to potential tax refunds and miscellaneous proceeds, the amounts of which are not anticipated in the best case to exceed U.S.\$1,500,000. Under no scenario would proceeds of the remaining assets be sufficient to repay the Lenders the outstanding indebtedness under the Credit Agreement. For the reasons set out herein, Chesswood is liable to the plaintiff for the total deficiency owing under the Credit Agreement, once finally determined.

98. For the reasons set out herein, the Individual Defendants are also liable to the plaintiff for the full amount of Chesswood's indebtedness to the Lenders, once finally determined.

99. The plaintiff proposes that this action be tried in Toronto.

(Date of issue)

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Plaintiff

-and- CHESSWOOD GROUP LIMITED et al.
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CHESSWOOD GROUP LIMITED, et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(LIFT OF STAY OF PROCEEDINGS)**

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